

Domestic Violence

A Guide to Civil and Criminal Proceedings
(Third Edition)



Michigan Judicial Institute
Grant funding administered by the
**Michigan Domestic Violence
Prevention and Treatment Board**

By **Mary M. Lovik, J.D.**

With assistance from the
**Domestic Violence Benchbook
Advisory Committee**

Revised by **Jennifer D. Warner, J.D.**

The first and second editions of this benchbook were supported by Grant Number 96-WF-NX-0026 awarded by the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice. The assistant Attorney General, Office of Justice Programs, coordinates the activities of the following program offices and bureaus: Bureau of Justice Assistance, Bureau of Justice Statistics, National Institute of Justice, Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.

Michigan Supreme Court

- Hon. Maura D. Corrigan, *Chief Justice*
- Hon. Michael F. Cavanagh, Hon. Elizabeth A. Weaver, Hon. Marilyn Kelly, Hon. Clifford W. Taylor, Hon. Robert P. Young, Jr., Hon. Stephen J. Markman, *Justices*
- John D. Ferry, Jr., *State Court Administrator*

Michigan Judicial Institute Staff

- Dawn F. McCarty, *Director*
- Anne M. DeMarco, *Program Assistant*
- Phoenix Hummel, *Research Attorney*
- Sheila J. Kallish, *Program Assistant*
- Denise D. Kruger, *Administrative Assistant*
- Mary Ann McDaid, *Multimedia Specialist*
- Tobin L. Miller, *Publications/Program Manager*
- Kristen Osterland, *Office Assistant*
- Tricia A. Shaver, *Program Assistant*
- Peter C. Stathakis, *Program Manager*
- Jennifer D. Warner, *Research Attorney*
- Cathy Weitzel, *Judicial Education /Conference Center Coordinator*

The research done on this benchbook is current through March 24, 2004. This benchbook is not intended to be an authoritative statement by the Justices of the Michigan Supreme Court regarding any of the substantive issues discussed. However, it does represent the consensus of the author and the advisory committee members regarding these issues.

Using This Benchbook

The Third Edition of *Domestic Violence: A Guide to Civil and Criminal Proceedings* updates the information provided in the Second Edition by including new legislation, court rule changes, and case law from May 31, 2001 (the date of the Second Edition) through March 24, 2004. This edition incorporates most of the package of domestic violence legislation enacted in 2001, 2001 PA 187-212. As in the Second Edition, this edition addresses Michigan law governing domestic violence in the three courtroom contexts where it is most likely to be at issue:

- **In criminal proceedings (Chapters 3 to 5).** The Third Edition has added new discussion of relevant amendments to the assault and battery statutes, and interim bond statutes. This edition also includes discussion of the witness tampering statutes. Chapter 5 contains an updated discussion of the criteria for admitting expert testimony based upon the amended MRE 702, which became effective on January 1, 2004.
- **In personal protection proceedings (Chapters 6 to 8).** The discussion in the Third Edition encompasses the 2001 amendments to the statutes governing personal protection orders, which became effective April 1, 2002. These amendments include provisions for enforcement of foreign protection orders. In addition, the discussion of PPO enforcement proceedings involving a respondent under the age of 18 has been updated to include the amended court rules governing juvenile proceedings.
- **In divorce and child custody proceedings (Chapters 10 to 13).** Effective April 1, 2002, the Michigan Legislature repealed the Uniform Child Custody Jurisdiction Act (“UCCJA”) and enacted the Uniform Child-Custody Jurisdiction and Enforcement Act (“UCCJEA”). A discussion of the UCCJEA has now been incorporated into these chapters.

In addition to the legal discussion, the reader will find:

- General information about the dynamics of domestic violence (Chapter 1);
- An updated listing of community resources that address domestic violence (Appendix A); and
- An updated listing of culturally-specific resources that address survivors of domestic violence (Appendix B).

To supplement the foregoing information, “best practice” suggestions are provided throughout the text. This supplementary information has been included primarily to address safety concerns that accompany the legal issues in cases involving allegations of domestic violence. The “best practice” suggestions come from the judges, attorneys, service providers, and court personnel who oversaw the drafting of the First and Second Editions of the benchbook as members of its Advisory Committee. **The “best practice” suggestions in this benchbook represent the best professional judgment of Advisory Committee members and are not intended to be authoritative statements by the Justices of the Michigan Supreme Court.**

In preparing this benchbook, MJJ has made an effort to provide readers with an integrated resource that sets each type of court proceeding into its larger context. Allegations of domestic violence may simultaneously be at issue in multiple courts and multiple counties as criminal, domestic relations, and personal protection proceedings are instituted. Accordingly, each court involved in these disparate proceedings can best respond to the parties’ situation if it acts with an understanding of how its decision-making might affect (or be affected by) other proceedings in the court system. Many of the “best practice” suggestions and cross-references in this benchbook are intended to remind the reader of the potential relationships between the criminal, personal protection, and domestic relations proceedings that are its subject matter.

Court proceedings involving allegations of domestic violence also take place within the local community as a whole. Domestic violence is a phenomenon of such complexity that no one social institution acting in isolation can provide an adequate response. For example, issuance of a personal protection order will not adequately protect a domestic violence victim unless violations of the order are swiftly and strictly enforced. A court's efforts to protect victims and hold abusers accountable will thus be most effective if they are coordinated with the actions of police, prosecutors, and other community service providers. Many of the "best practice" suggestions in this benchbook are included to alert the reader to areas where a coordinated response is particularly important.

The legal discussion in this benchbook is current as of March 24, 2004. The reader is cautioned that domestic violence is the subject of continuing legislative attention, so that statutory and court rule changes are likely after this date. MJI has attempted wherever possible to provide an accurate description of the law without bias toward any particular viewpoint. Where the law is ambiguous or silent on an issue, MJI has indicated the Advisory Committee's suggested resolution where the Committee could reach a consensus. **Advisory Committee suggestions represent the best professional judgments of Advisory Committee members and are not intended to be authoritative statements by the Justices of the Michigan Supreme Court.** The law in this area is developing rapidly, and readers are encouraged to consult legislation, appellate opinions, and MJI Updates issued after the publication date of this benchbook.

Readers should also be mindful that the psychological and sociological aspects of domestic violence have only been the subject of concentrated scholarly attention for the past 25 to 30 years. There is still much to discover about this difficult subject and much that remains controversial. A careful reader will therefore remain alert for new information about the nature and causes of domestic violence that comes to light after the publication date of this benchbook.

Although this benchbook is primarily intended for use by judges, it also contains information useful to law enforcement officers, court personnel, prosecuting attorneys, defense attorneys, private attorneys, and domestic violence service providers.

Domestic Violence: A Guide to Civil and Criminal Proceedings was first published in 1998 and was designed to meet the needs of judges and court employees assigned to the Family Division of the Circuit Court. The Second Edition of this benchbook was published in May of 2001.

Acknowledgments

The First and Second Editions of *Domestic Violence: A Guide to Civil and Criminal Proceedings* were funded by a grant administered by the Domestic Violence Prevention and Treatment Board. The Michigan Judicial Institute thanks the Board for its generous support.

Work on the First and Second Editions of this benchbook was overseen by Advisory Committees comprised of judges, court personnel, prosecutors, private attorneys, law enforcement officers, legislators, and social service providers. Advisory Committee members reviewed those portions of the text that addressed their areas of expertise and provided most of the “best practice” suggestions for this benchbook. These “best practice” suggestions represent the Committee members’ best professional judgments. They do not constitute recommendations from the Michigan Supreme Court and should not be viewed as definitive in all cases. The Committee encourages each local court to develop individual policies for domestic violence cases in consultation with other service providers in its own community.

The Advisory Committee members for the First Edition of this benchbook were as follows:

- Ms. Charlotte Allen
Attorney at Law
Midland
- Ms. Shannon Brower
Grant Administrator
Michigan Commission on Law
Enforcement Standards
Lansing
- Ms. Debra Cain
Executive Director
Michigan Domestic Violence
Prevention & Treatment Board
Lansing
- Hon. William J. Caprathe
Chief Judge
18th Circuit Court
Bay City
- Ms. Barbara Craft
Attorney at Law
Grand Rapids
- Ms. Dawn Duncan
Tribal Attorney
Hannahville Indian Community
Wilson
- Ms. Jan Findlater
Professor of Law
Wayne State University Law School
Detroit
- Mr. David J. H. Garvin
Program Director
Alternatives to Domestic Aggression
Ann Arbor
- Ms. Carol Hackett-Garagiola
Attorney at Law
Bloomfield Hills
- Ms. Sheila Hackett Gaskell
Assistant US Attorney
US Attorney’s Office
Detroit
- Mr. Mark Gates
Legal Counsel, Senate Judiciary
Committee
Senate Majority Policy Office
Lansing
- Ms. Leslie Hagen
Domestic Violence Training Attorney
Prosecuting Attorneys’ Association of
Michigan
Lansing
- Ms. Kathleen Hagenian
Director, Public Policy & Program
Services
Michigan Coalition Against
Domestic & Sexual Violence
Okemos
- Hon. Richard B. Halloran, Jr.
Family Division Judge
3rd Circuit Court
Detroit
- Hon. Archie L. Hayman
Circuit Judge
7th Circuit Court
Flint
- Hon. Elizabeth O. Pollard Hines
Chief Judge
15th District Court
Ann Arbor
- Ms. Mary Hood
Attorney at Law
Oak Brook, Illinois
- Ms. Beryl Jenkins
Chief Probation Officer
55th District Court
Mason
- Hon. J. Richardson Johnson
Chief Judge Pro Tempore
9th Circuit Court
Kalamazoo
- Mr. Theodore J. Johnson
Attorney Magistrate
35th District Court
Plymouth
- Ms. Hermina Kramp
Chief, Evaluation & Certification
Standards
Michigan Commission on Law
Enforcement Standards
Lansing
- Hon. Dennis B. Leiber
Family Division Judge
17th Circuit Court
Grand Rapids
- Hon. Patricia L. Micklow
Chief Judge
96th District Court
Marquette
- Ms. Linnea Mitchell
Victim’s Services
61st District Court
Grand Rapids
- Ms. Ruth Oja
Victim Advocate
Hannahville Indian Community
Wilson
- Hon. Chad C. Schmucker
Chief Judge
4th Circuit Court
Jackson
- Hon. Thomas E. Shumaker
Probate Judge
St. Joseph County Probate Court
Centreville
- Hon. Edward Sosnick
Chief Judge
Presiding Family Division Judge
6th Circuit Court
Pontiac
- Ms. Kathryn Tierney
Tribal Attorney
Bay Mills Indian Community
Brimley
- Hon. William Van Regenmorter
Michigan State Senator
Hudsonville
- Hon. Brian K. Zahra
Circuit Judge
3rd Circuit Court
Detroit

Reviewers for the Second Edition were:

- Mr. William Bartlam
Deputy Court Administrator Oakland
County Probate Court Family
Division
Pontiac
- Ms. Debra Cain
Executive Director
Michigan Domestic Violence
Prevention & Treatment Board
Lansing
- Ms. Carol Hackett Garagiola
Legal and Policy Director
Michigan Domestic Violence
Prevention & Treatment Board
Lansing
- Mr. David J. H. Garvin
Program Director
Alternatives to Domestic Aggression
Ann Arbor
- Ms. Sheila Hackett Gaskell
Assistant US Attorney
US Attorney's Office
Detroit
- Ms. Leslie Hagen
Attorney at Law
East Lansing
- Ms. Kathleen Hagenian
Director, Public Policy & Program
Services
Michigan Coalition Against
Domestic & Sexual Violence
Okemos
- Hon. Richard B. Halloran, Jr.
Family Division Judge
3rd Circuit Court
Detroit
- Mr. James Henderson
Probation Officer
Domestic Violence Probation Unit
Ann Arbor
- Hon. Elizabeth O. Pollard Hines
Chief Judge
15th District Court
Ann Arbor
- Ms. Linda Marks
Office of Child Support
Lansing
- Ms. Karen Porter
Michigan Domestic Violence
Prevention & Treatment Board
Lansing
- Officer Jodi Richhart
Michigan Commission on Law
Enforcement Standards
Adrian
- Dr. Daniel Saunders
Associate Professor
School of Social Work
University of Michigan
Ann Arbor
- Professor Melissa Tatum
University of Tulsa College of Law
Tulsa, Oklahoma
- Sgt. David Wood
Prevention Services Section
Michigan State Police
Lansing

MJI gratefully acknowledges the time, helpful advice, and expertise contributed by the foregoing individuals.

Jennifer Warner, MJI Research Attorney, researched, revised, and updated the text for the third edition of the benchbook. Tobin L. Miller, MJI Publication/Program Manager, edited the third edition. Mary Ann McDaid, MJI Multi-Media Development Specialist, was responsible for page layout and coordination of reproduction, and Denise Kruger, Administrative Assistant, was responsible for distribution.

Mary Lovik, former MJI Publications Administrator, researched and wrote the First and Second editions of the benchbook and served as the project manager for its second edition. Research and editorial assistance for the Second Edition was provided by the following MJI staff members: Mary Fielding (Chapter 5), David Gruber (Chapter 11), Tobin Miller (Chapter 13), and Thomas Smith (Chapter 9). Ann Tschirhart, former MJI Publications Coordinator, was responsible for the cover design. Cover art was provided by Julianna Lovik. Mary Ann McDaid, MJI Multi-Media Development Specialist, was responsible for page layout and coordination of reproduction. Tricia Shaver, MJI Office Assistant, assisted with distribution.

The following employees of the Michigan Supreme Court also assisted with the preparation of the First and Second Editions of the benchbook: Amy Byrd, Pam Creighton, Colleen Condren-Newcomer, James Covault, Sharon Deja, Sandra Hartnell, Ron Kollen, Dawn McCarty, Tobin Miller, Michael Murray, Bill Newhouse, Peter Stathakis, George Strander, and Doug Van Epps.

The Michigan Judicial Institute was created in 1977 by the Michigan Supreme Court. MJI is responsible for providing educational programs and written materials for Michigan judges and court personnel. In addition to the seminar offerings, MJI is engaged in a broad range of publication activities, services, and projects that are designed to enhance the professional skills of all those serving in the Michigan court system. MJI welcomes comments and suggestions. Please send them to: **Michigan Judicial Institute, P.O. Box 30205, Lansing, MI 48909, (517) 373-7171.**
